IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 29835 of 2004(B)

PETITIONER:

P.K.MOHANRAJ, AGED 55, S/O.KRISHNAN,
PADAKKARA HOUSE, KUMBALANGI, COCHIN-7.

BY ADV. SRI.K.S.MADHUSOODANAN

RESPONDENTS:

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1. STATE OF KERALA TO BE REP.BY SECRETARY,
FOREST DEPAPRTMENT,THIRUVANANTHAPURM.

2. CONSERVATOR OF FOREST, HIGH RANGE
CIRCLE, KOTTAYAM.

3. DIVISIONAL FOREST OFFICER,
TIMBER SALES DIVISION, KOTTAYAM.

BY GOVERNMENT PLEADER SRI. T.B. RAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON 17/07/2007 DELIVERED THE FOLLOWING:

W.P.(C)NO. 29835 OF 2004

EXT.P1: TRUE COPY OF SERVICE ORDER NO.68/91 DATED 9.11.2001.

EXT.P2: TRUE COPY OF THE ORDER NO.E27989/2000 DATED 14.6.2001 OF THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE JUDGMENT IN O.P.NO.22186/2001 DATED 29.8.2003.

EXT.P4: TRUE COPY OF THE LETTER NO.TSS. 464/02 OF THE 3RD RESPONDENT DATED 16.8.2004.

EXT.P5: TRUE COPY OF THE REPLY NO.TS.5 464/02 DATED 8.9.2004.

EXT.P6: TRUE COPY OF THE ORDER NO.TS.5-464/02 DATED 10.9.2004.

EXT.P7: TRUE COPY OF G.O.(P)NO.145/2006/FIN. DATED 25.3.2006.

TRUE COPY

PA TO JUDGE.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.29835 OF 2004-B

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Dated this the 17th day of July, 2007.

JUDGMENT

The petitioner entered service on 14-1-1985 as a Depot Watcher in the Forest Department. He was appointed by transfer on 14-1-1990 as a Forest Guard. On 14-1-1998, he was granted a grade promotion. He retired from service on 31-3-2001. By Ext.P3 judgment, this Court noticed that the retrospective promotion with effect from 14-1-1990 was extended to him after considering his case in the light of an earlier judgment in O.P.No.9100/1992. The reversion imposed on him on 25-11-1991 was found to be bad. He moved the competent authority against the erroneous reversion. By Ext.P3 judgment, this Court directed that since his promotion was denied wrongly, he was entitled to

salary from 14-1-1990. Arrears of salary and of pension were ordered to be released upon revision. Thereafter, going by the impugned Ext.P6, the grant of higher grade with effect from 14-1-1998 and consequential fixation of pay at the rate of Rs.4000 in the scale of pay of Rs.4000-6090 obtained a still further approval at the hands of the Accountant General when his pensionary benefits were revised and admitted by the Accountant General. In my view, therefore, after his retirement and after his pensionary benefits were revised and admitted by the Accountant General, there was no room for the Conservator of Forests to germinate a file which has led to Ext.P6. The Conservator of Forests ought not to have re-opened the closed issue and raised the question of grant of higher grade after finality was attained even in pensionary matters. May be true, that in Government service, the Government servant and the Government can settle their accounts at the time of retirement. But once the retiral benefits have also been fixed and cleared by the Accountant General, if a Government servant is still to expect a sword of

Democles to hang over him regarding a probable re-fixation or re-opening of a higher grade that was granted earlier, the finality of such administrative matters could be left to the sweet-will of administrative authorities to be re-opened at their fancies. Finality is one of the corner stones on which the propagation of a service is often tested. This is why questions relating to different issues are treated as dead, with the passage of time. Otherwise, there would be no finality. It is rather unfortunate and inappropriate for the respondents to have re-opened the case of the petitioner in so far as it relates to the grant of the higher grade. The impugned Ext.P6 is,therefore, liable to be quashed.

2. On to Ext.P5, the stand taken by the respondents is that allowances do not form part of salary and therefore, in giving effect to the directions contained in Ext.P3 judgment to pay the petitioner arrears of salary, allowances are not payable. The claim of the petitioner is for different allowances. Rule 12(23) in Part I KSR defines “pay”. The

concept of salary includes pay and allowances, including dearness allowance, compensatory allowance and such other allowances that an officer would earn without proof of expenditure to claim reimbursement. Note II to Rule 26 is of easy guidance to understand the scope of the disbursals that have to be made to comply with the directions contained in Ext.P3 judgment.

In the result, this writ petition is allowed quashing Ext.P6 and Ext.P5 to the extent they refuse to release to the petitioner amounts in terms of Note II to Rule 26 in Part I KSR.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-